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UNCLAS SECTION 01 OF 02 LILONGWE 000715

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SUBJECT: PRESIDENT DEMANDS TOP PROSECUTOR'S RESIGNATION

REF: LILONGWE 708

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1.(U) Summary: President Mutharika has requested the resignation of the Director of Public Prosecution, Ishmael Wadi, following Wadi's discontinuance of the corruption case against former president Bakili Muluzi. Members of the legal profession and civil society have sharply criticized Mutharika for compromising the independence of prosecutors and failing to observe constitutional procedure in the dismissal. The sacking raises concerns about the independence of the judiciary, and will undoubtedly hinder Malawi's anti-corruption efforts in the near term. End Summary.

Another One Bites the Dust  
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12. (U) For the second time in two weeks, President Mutharika has fired a senior prosecutor over the handling of the corruption case against former president Bakili Muluzi. In a speech in Blantyre on August 10, Mutharika asked for the resignation of the Director of Public Prosecution (DPP), Ishmael Wadi, in response to Wadi's actions to discontinue the Muluzi case. Wadi filed a motion for discontinuance on July 31, based on the fact that both the Director and Deputy positions at the Anti-Corruption Bureau were vacant, and by law the case could not continue because no prosecutor was present.

13. (U) An angry Mutharika declared that Wadi's action had "destroyed my credibility as a president against corruption," and demanded that Wadi tender his resignation within 24 hours. Mutharika was annoyed that Wadi had discontinued the case without consulting him, and had made statements to the media that Muluzi no longer had a case to answer. For that reason, Mutharika said, "I'm also using the same press and the public, asking him to resign."

14. (U) Wadi was at that moment traveling in South Africa and reportedly had no idea that he was about to be fired. He has since returned to the country, but has not submitted his resignation.

15. (SBU) Two weeks ago, Mutharika suspended Anti-Corruption Bureau Director Gustave Kaliwo for arresting Muluzi without the president's consent, during delicate negotiations with the

opposition over the passage of the national budget. Kaliwo submitted his resignation on August 11, and the GOM has announced a replacement, pending approval by a parliamentary committee.

#### Sharp Criticism

16. (U) The Malawi Human Rights Commission and the Malawi Law Society issued strong statements criticizing Mutharika's actions. The Law Society said that the president violated both the Corrupt Practices Act and the Constitution by not providing sufficient justification for the dismissals. Ordinary Malawians have criticized the manner in which Wadi was fired in public, with no prior warning.

#### Comment

17. (SBU) Mutharika is struggling to maintain his anti-corruption credentials, but the immediate effect of these firings will be to weaken the institutions that are his chief corruption-fighting weapons. The personnel changes will certainly cause a loss of momentum in the ACB and the DPP. Given the dearth of legal professionals in Malawi, there are few capable candidates available to fill these vacancies. Even if competent replacements are found, they will likely be very cautious in their handling of sensitive corruption cases, in light of what happened to their predecessors.

18. (SBU) Of greater concern is Mutharika's authoritarian tendencies and his lack of appreciation for the basic constitutional principles of separation of powers and the independence of the judiciary. In his speech, Mutharika asked rhetorically "How can you [Wadi] be independent from the person who has appointed you?" He further stated, "He did not

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appoint himself. He is appointed under the Constitution by me. And I'm also the Minister responsible for Civil Service... There is a breach of faith and breach of trust, but also, breach of allegiance to me." The president suggested ominously that Wadi had been "Perhaps obeying other forces," an apparent reference to Wadi's ties to former president Muluzi.

19. (SBU) From these statements and others it is clear that Mutharika views the DPP and the ACB Director, both judicial officers, as being directly answerable to him because he has appointed them, in the same way that officers of the executive branch serve at the pleasure of the president. What Mutharika evidently doesn't see is how damaging his actions are to the rule of law and the fight against corruption in Malawi.  
EASTHAM